

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

35

DATE: FEB 03 2012

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a hospital and medical research center. It seeks to permanently employ the beneficiary as a “Hospitalist at academic rank of Assistant Professor” and to classify her as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

As defined in the regulation at 8 C.F.R. § 204.5(k)(2):

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director denied the petition on the ground that the minimum educational requirements described on the labor certification (ETA Form 9089) were less than those of a master’s degree, and did not match the educational requirements specified in the petitioner’s job advertisements. The Director determined that the evidence of record did not show that the proffered position required an individual with an advanced degree or a bachelor’s degree and five years of progressive experience in the specialty.

The appeal is properly filed and timely and makes specific allegations of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, as certified by the DOL and submitted with the instant petition. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date is the date the labor certification application was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In this case the ETA Form 9089 was accepted for processing by the DOL on April 14, 2008.

The education, training, and experience required for the proffered position are set forth in Part H of the ETA Form 9089. Lines 4-A and 4-B specify that a first professional degree in the field of medicine is required to qualify for the job. Line 9 specifies that a foreign educational equivalent is acceptable. In addition, Box 14 lists three other requirements the beneficiary must fulfill: (1) eligibility for a medical license in the State of Arkansas, (2) BE/BC (board eligible/board certified) in Internal Medicine, and (3) completion of a residency program in internal medicine.

The documentation of record shows that the beneficiary entered Grant Medical College at the University of Mumbai, India, in August/September 1997, completed her coursework and a series of three examinations by October 1991, followed that up with one year of rotating internship training from January 2002 until February 2003, and was awarded the degrees of Bachelor of Medicine and Bachelor of Surgery on December 19, 2003. Based on the entire record – including information from the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), indicating that a Bachelor of Medicine / Bachelor of Surgery in India is awarded upon completion of 4.5 to 5 years of tertiary study plus one year of internship beyond the Higher Secondary Certificate (equivalent to a U.S. high school diploma), is comparable to a first professional degree in medicine in the United States, and is equivalent to a U.S. Doctor of Medicine (M.D.) – the AAO determines that the beneficiary's Indian degrees are equivalent to an M.D. in the United States. Since an M.D. is a first professional degree in medicine in the United States, the beneficiary meets the educational requirement for the proffered position, as specified in Lines 4-A, 4-B, and 9 of the labor certification. Furthermore, the beneficiary's foreign medical degree may qualify as an advanced degree for purposes of section 203(b)(2) of the Act.

The record also shows that the beneficiary passed the United States Medical Licensing Examination (Steps 1, 2, and 3) between March 21, 2003 and February 25, 2004.

As for the other job requirements specified in Box 14 of the labor certification, the documentation of record shows that the beneficiary fulfilled these as well before the priority date of April 14, 2008. In particular, the beneficiary –

- completed a three-year program as a resident in internal medicine at Mount Sinai School of Medicine of New York University from July 1, 2004 to June 30, 2007,
- was certified by The American Board of Internal Medicine as a Diplomate in Internal Medicine for the ten-year period of 2007 to 2017, and
- was granted a license to practice medicine and surgery in the State of Arkansas by the Arkansas State Medical Board on October 5, 2007.

Thus, the beneficiary meets all of the educational and other requirements for the proffered position, as specified in the labor certification. Accordingly, the petitioner has overcome the Director's ground for denial. The Director's decision will therefore be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The Director's decision of December 4, 2008 is withdrawn. The appeal is sustained. The petition is approved.